

## **TECHNICAL ASSISTANCE ADVISORY**

### **T 01-01**

(Published pursuant to Chapter 48.42 RCW)

**To:** All Health Carriers and the Washington State Health Insurance Pool Board

**Subject:** Washington State compliance with certain provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA)

**Date:** September 6, 2001

The purpose of this Technical Assistance Advisory is to clarify specific requirements of Chapter 48.43 RCW and Chapter 284-43 WAC in order to comply with certain provisions of HIPAA, as required by the federal Centers for Medicare and Medicaid Services (CMS).

#### **Background:**

A major part of HIPAA was the establishment of health benefit portability rights for certain persons defined as “eligible individuals.” HIPAA allowed states, among other things, to establish a “state alternative mechanism” (SAM) to ensure that health coverage existed in the state for such individuals. Washington’s SAM, based on choice of coverage in the individual market and access to the Washington State Health Insurance Pool (WSHIP) when no private coverage was available, was deemed to be acceptable by CMS, formerly HCFA, in 1997.

However, certain provisions of SB 6067 (Individual Health Insurance Act of 2000) render this state’s SAM not acceptable. In 2001, in an effort to return the SAM to acceptable status, the Office of Insurance Commissioner (OIC) and members of the health carrier community worked successfully to have adopted remedial legislation (HB 1633: chapter 197, laws of 2001) that addressed HIPAA compliance issues where the state statute was in conflict with the federal. However, as a result of the prior agreement by interested parties, certain HIPAA provisions were omitted from HB 1633 and were left to be addressed through OIC rules only. OIC has begun that rulemaking; however, pending rule adoption, this Technical Assistance Advisory is intended to render the Washington SAM acceptable to CMS.

#### **Requirements:**

In light of the federal HIPAA requirements and the Commissioner's authority set forth in WAC 284-43-125, all health carriers and the WSHIP are required to comply with the following provisions pending adoption of related rules.

- At any time in any county when the availability of private individual insurance coverage is less than one health carrier offering two health benefit plans, eligible individuals may enroll in the WSHIP as provided in WAC 284-91-060 without the requirement of rejection as set forth in RCW 48.41.100.
- Health carriers and the WSHIP are required to identify HIPAA eligible individuals at the time of application based on the requirements set forth herein. An eligible individual:
  - (1) Must have 18 months or more of creditable coverage without a break of 63 full days.
  - (2) Must have had the most recent prior creditable coverage under a group health plan, governmental plan, or church plan (or under health insurance coverage offered in connection with such a plan).
  - (3) May not be eligible for a group health plan.
  - (4) May not be eligible for Medicare or Medicaid.
  - (5) May not have lost the most recent coverage because of fraud or non-payment of premiums.
  - (6) If offered COBRA or a similar State program, must elect and exhaust such coverage.
- A carrier must take into account all evidence of creditable coverage. The individual may furnish certificates of creditable coverage; may attest to the period of creditable coverage and present corroborating evidence of creditable coverage such as explanations of benefit claims, other correspondence from a plan or issuer indicating coverage, pay stubs showing a payroll deduction for health coverage, a health insurance identification card, records from medical care providers indicating health coverage, third party statements verifying periods of coverage, and any other relevant documents that show periods of health coverage, or other means such as a telephone call from the issuer to a third party verifying creditable coverage.
- In accordance with modifications of RCW 48.41.110(7)(b) and RCW 48.43.012(3), preexisting condition waiting periods must be waived for a person who is an eligible individual as defined in HIPAA. For purposes of determining if the person has the requisite amount of creditable coverage to qualify as a federally eligible individual, the risk pool and individual market carriers must count the person's catastrophic coverage and/or short-term coverage as "creditable coverage."

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